

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

SEVERN RODGERS, JR. # 08963-078

PETITIONER

VS.

CIVIL ACTION NO. 5:09-cv-177(DCB)(MTP)

BRUCE PEARSON, Warden

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on a Petition pursuant to 28 U.S.C. § 2241 filed by Severn Rodgers, Jr. ("Rodgers"). Before the court are the petitioner's Motion for Summary Judgment (**docket entry 25**), the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 33**), and the petitioner's objections thereto (**docket entry 34**). Having carefully considered the petitioner's motion, the report and recommendations of the magistrate judge, and the petitioner's objections, and being fully advised in the premises, the Court finds as follows:

On October 4, 1999, Rodgers pled guilty to Driving While Intoxicated in Houston County, Texas, Cause No. 98-CR-179, and was sentenced to ten years incarceration. Rodgers subsequently escaped and was recaptured. On or about May 12, 2000, Rodgers pled guilty to Escape and Burglary of a Building in Houston County, Texas, Cause No. 99-CR-186, and was sentenced to ten years imprisonment, to run concurrently with any other sentence to be served by him in the Texas Department of Criminal Justice - Institutional Division. See Petition [1] and Memo. [2]; Declaration of Bryan Erickson, Ex.

1 to Answer [18].

On December 11, 2000, pursuant to a writ of habeas corpus ad prosequendum, Rodgers appeared in the United States District Court for the Eastern District of Texas for an initial appearance in Case No. 9:00-cr-13. On or about June 28, 2001, he pled guilty to the crime of Felon in Possession of a Firearm (committed on or about October 19, 1999), in violation of 18 U.S.C. § 922(g)(1), and was sentenced in the United States District Court for the Eastern District of Texas to a 120-month term of imprisonment. The sentence was ordered to run consecutive to Houston County, Texas Case No. 98-CR-179, and concurrent to Houston County, Texas Case No. 99-CR-186. See Petition [1]; Memo. [2] at 37-54; Ex. 1 and Attachment # 3 to Answer [18-2].

On July 11, 2001, Rodgers was returned to the State of Texas for the completion of his state term of imprisonment. On June 29, 2005, Rodgers completed his state term and was released on parole to the custody of the United States Marshals Service for the service of the federal sentence. See Memo. [2]; Ex. 1 to Answer [18-2].

Rodgers is currently incarcerated in the Federal Correctional Complex in Yazoo City, Mississippi ("FCC Yazoo City"), and is projected for release on August 14, 2014. In his Petition, Rodgers alleges that he should receive 811 days of jail credit against his federal sentence pursuant to Willis v. United States, 438 F.2d 923

(5th Cir. 1971); that he should be credited with 540 days of Good Conduct Time based on 54 days for each year of a 120-month sentence; that his federal sentence should commence on June 28, 2001, as he was in the primary custody of the United States when he was sentenced by the United States District Court for the Eastern District of Texas; and that his sentence was impermissibly interrupted.

In his Report and Recommendation, Magistrate Judge Parker finds that Rodgers is not entitled to credit against both his state and federal sentences under 18 U.S.C. § 3585(b); that Rodgers' good conduct time has been calculated properly; that Rogers is not entitled to Willis credit because his federal sentence is running consecutively to, not concurrently with, his state sentence; and that Rodgers' sentence was not impermissibly interrupted. Magistrate Judge Parker further finds that the petitioner's motion for summary judgment should be denied, and his § 2241 petition dismissed with prejudice. The petitioner's objections do not convince the Court otherwise. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of United States Magistrate Judge Michael T. Parker (**docket entry 33**) is hereby adopted as the finding of this Court;

FURTHER ORDERED that the petitioner's motion for summary judgment (**docket entry 25**) is DENIED;

FURTHER ORDERED that the 28 U.S.C. § 2241 petition is

dismissed. A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure, dismissing this action with prejudice.

SO ORDERED, this the 28th day of March, 2011.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE